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APR 21 1989

No. 111 Original

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

STATE OF DELAWARE,
Plaintiff,
STATE OF TEXAS,
Plaintiff-Intervenor,
v.
STATE OF NEW YORK,
Defendant.

MOTION OF THE STATES OF ALABAMA, HAWAII, ILLINOIS, INDIANA, KANSAS, LOUISIANA, MONTANA, NEVADA, OKLAHOMA, SOUTH DAKOTA, UTAH AND WASHINGTON, AND THE COMMONWEALTHS OF KENTUCKY AND PENNSYLVANIA FOR LEAVE TO FILE COMPLAINT IN INTERVENTION; COMPLAINT IN INTERVENTION; AND BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

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Pursuant to Rule 9 of the Rules of the Supreme Court, the States of Alabama, Hawaii, Illinois, Indiana, Kansas, Louisiana, Montana, Nevada, Oklahoma, South Dakota, Utah and Washington, and the Commonwealths of Kentucky and Pennsylvania ("States"), sovereign states of the United States of America, by and through their Attorneys General and counsel, move this Court for an order permitting them to intervene as Plaintiffs in the above-entitled case and permitting their proposed Complaint in Intervention, attached hereto, to be filed. In support of this motion, and as more fully set forth in the States' Brief in Support of Motion for Leave to File Complaint in Intervention, the States allege as follows:

I.

1. On May 31, 1988, this Court granted Plaintiff State of Delaware's ("Delaware") Motion for Leave to File Complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal property held by securities brokerage firms incorporated in Delaware, referred to by Delaware as "Escheatable Property of Unknowns."

2. On December 12, 1988, Thomas Jackson, Esquire, was appointed Special Master.

3. On February 21, 1989, the Court granted the State of Texas' ("Texas") Motion for Leave to File Complaint in Intervention. Texas, like Delaware, raised the issue as to which state is entitled to claim and take possession of "Escheatable Property of Unknowns," which it referred to as "Excess Receipts." The Texas Complaint also made subject to this suit certain additional unclaimed intangible personal property held by clearinghouses for the settlement of trades in securities, and unclaimed principal and interest payments on state and municipal obligations.

4. As set forth in the attached proposed Complaint in Intervention, the States seek a determination of their rights to certain unclaimed intangible personal property, referred to as "Excess Receipts" and "Additional Excess Receipts," as defined in subparagraphs (a) and (b) below, which comes into being and acquires its character as unclaimed property in the context of securities transactions:

(a) "Excess Receipts" consist of unclaimed payments of dividends, profits, principal, interest, and securities representing any of the foregoing (collectively "Distributions"), held or formerly held by brokerage firms (regardless of where incorporated). Excess Receipts are Distributions received by these brokerage firms for the

benefit of the entities or individuals who possess the economic rights to the securities, including the entitlement to Distributions ("Beneficial Owners"), but which do not reach the Beneficial Owners. Upon information and belief, Excess Receipts are maintained in a "Suspense Account" until expiration of the applicable dormancy period, after which time they generally are demanded by and are remitted to New York.

(b) "Additional Excess Receipts" consist of (i) Distributions presently being remitted, or which may be remitted, to New York by nonbrokerage firm intermediaries, such as banks and clearinghouses for the settlement of trades in securities; and (ii) Distributions consisting of unclaimed principal and interest payments on state and municipal obligations. Additional Excess Receipts come into being in the same manner as Excess Receipts.

(c) The foregoing definitions of the intangible property which is the subject of this lawsuit are substantively the same as those used by Texas with one exception: they include the same classes of unclaimed property held by non-Delaware brokerage firms and by nonbrokerage firm intermediaries in addition to clearinghouses.

5. The Excess Receipts and Additional Excess Receipts (collectively "Funds") claimed herein constitute unclaimed property which comes into being when Distributions by the entity initially issuing the shares of stock, bonds, debentures and other securities ("Issuer") do not reach the Beneficial Owner. Intermediaries in the chain of distribution, such as banks, brokerage firms and clearinghouses, act on behalf of the Issuer and the Beneficial Owner with respect to Distributions.

6. If the identity of the Beneficial Owner is unknown, Distributions by corporations ("Corporate Issuers") and state and local governmental entities ("Government Is-

suers") that are unclaimed should be remitted to the state in which the Corporate Issuer is incorporated, or to the state of the Government Issuer, pursuant to each such state's unclaimed property statute. Each State claims such Distributions by Corporate Issuers incorporated within that State and by Government Issuers of that State.

7. The amount of the Funds at issue in this litigation that the States are entitled to is presently unknown, but is substantial.

8. Upon information and belief, portions of the Funds presently being remitted to New York are being commingled with the general funds of New York, are being expended by New York for general governmental purposes, and are not being held separate by New York subject to claims by the rightful owners.

9. The decision of the Court in this action will conclusively determine the right of the States to claim and take possession of the Funds. If the contention of either Delaware or New York is sustained, the States will be precluded from claiming and taking possession of the Funds.

10. The States' interests are not adequately represented by the original parties because Delaware, New York and the States each assert conflicting claims to the Funds. The States' interests are not adequately represented by Texas because Texas has not put in issue all the intangible personal property sought by the States. Texas, moreover, cannot be expected to identify, advocate and protect the rights of the States for several reasons: (i) Texas has no incentive to identify the property held by New York which properly belongs to the States; (ii) each State's claims are based on its own unclaimed property statute, which Texas cannot be expected to master so as to adequately represent the interests of the States; and (iii) although Texas and the States dispute the right of Delaware and New York to the Funds, Texas and the

States may assert conflicting claims thereto as the record becomes fully developed.

11. The States' motion is timely because neither Delaware nor New York has responded to Texas' Complaint in Intervention and the only discovery that has occurred has been a single set of interrogatories which Delaware has served on New York and New York has answered.

12. For the foregoing reasons, the States are entitled to intervene as a matter of right pursuant to Rule 24(a)(2), Federal Rules of Civil Procedure.

II.

13. Alternatively, the States request this Court to exercise its discretion and allow intervention pursuant to Rule 24(b)(2), Federal Rules of Civil Procedure.

14. A determination of the States' claims to the Funds involves questions of law and fact common to those already before the Court.

15. The States' intervention will aid in the resolution of the factual issues presented and the application of the law to the facts.

16. The States' intervention will not unduly delay or prejudice the adjudication of the rights of the parties to this action.

17. The States' intervention will avoid a multiplicity of lawsuits by obviating the need for the States to file separate actions against New York, thus expediting the ultimate resolution of the entire controversy and promoting judicial economy and efficiency.

18. For the foregoing reasons, the States should be allowed permissive intervention pursuant to Rule 24(b)(2), Federal Rules of Civil Procedure.

III.

19. In *Western Union Telegraph Company* v. *Pennsylvania*, 368 U.S. 71, 79 (1961), this Court recognized the difficulties inherent in resolving controversies between

different states over their respective rights to claim and take possession of unclaimed intangible personal property, and concluded that this Court is the appropriate forum in which "all the States that want to do so can present their claims for consideration and final, authoritative determination." *See also Pennsylvania* v. *New York*, 407 U.S. 206 (1972); *Texas* v. *New Jersey*, 379 U.S. 674 (1965).

20. The States seek the opportunity to present their claims to this Court. This Court has allowed Texas to intervene in this action, and for purposes of this motion the States stand in the same position as did Texas prior to the granting of its motion.

21. Wherefore, the States pray that their Motion for Leave to File Complaint in Intervention be granted.

Respectfully submitted,

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Plaintiff,

STATE OF TEXAS,
Plaintiff-Intervenor,

STATES OF ALABAMA,
HAWAII, ILLINOIS, INDIANA,
KANSAS, LOUISIANA, MONTANA,
NEVADA, OKLAHOMA, SOUTH DAKOTA,
UTAH AND WASHINGTON, AND COMMONWEALTHS OF
KENTUCKY AND PENNSYLVANIA,
Plaintiffs in Intervention,

v.

STATE OF NEW YORK,
Defendant.

COMPLAINT IN INTERVENTION OF THE STATES OF ALABAMA, HAWAII, ILLINOIS, INDIANA, KANSAS, LOUISIANA, MONTANA, NEVADA, OKLAHOMA, SOUTH DAKOTA, UTAH AND WASHINGTON, AND THE COMMONWEALTHS OF KENTUCKY AND PENNSYLVANIA

The States of Alabama, Hawaii, Illinois, Indiana, Kansas, Louisiana, Montana, Nevada, Oklahoma, South

Dakota, Utah and Washington, and the Commonwealths of Kentucky and Pennsylvania, Plaintiffs in Intervention, by and through their Attorneys General and counsel, file this Complaint in Intervention and allege as follows:

I. JURISDICTION

1. The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and Section 1251 of Title 28 of the United States Code.

II. PENDING ACTION

2. On May 31, 1988, this Court granted Plaintiff State of Delaware's ("Delaware") Motion for Leave to File Complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal property held by securities brokerage firms incorporated in Delaware.

3. On February 21, 1989, the Court granted the State of Texas' ("Texas") Motion for Leave to File Complaint in Intervention. The Texas Complaint also made subject to this suit certain additional unclaimed intangible personal property held by securities brokerage firm and nonbrokerage firm intermediaries.

III. INTEREST AND CLAIM OF PLAINTIFFS IN INTERVENTION

4. Plaintiffs in Intervention are the States of Alabama, Hawaii, Illinois, Indiana, Kansas, Louisiana, Montana, Nevada, Oklahoma, South Dakota, Utah and Washington, and the Commonwealths of Kentucky and Pennsylvania ("States").

5. The States seek a determination of their rights to certain unclaimed intangible personal property, referred to as "Excess Receipts" and "Additional Excess Re-

ceipts," as defined in subparagraphs (a) and (b) below, which comes into being and acquires its character as unclaimed property in the context of securities transactions:

(a) "Excess Receipts" consist of unclaimed payments of dividends, profits, principal, interest, and securities representing any of the foregoing (collectively "Distributions"), held or formerly held by brokerage firms (regardless of where incorporated). Excess Receipts are Distributions received by these brokerage firms for the benefit of the entities or individuals who possess the economic rights to the securities, including the entitlement to Distributions ("Beneficial Owners"), but which do not reach the Beneficial Owners. Upon information and belief, Excess Receipts are maintained in a "Suspense Account" until expiration of the applicable dormancy period, after which time they generally are demanded by and are remitted to New York.

(b) "Additional Excess Receipts" consist of (i) Distributions presently being remitted, or which may be remitted, to New York by nonbrokerage firm intermediaries, such as banks and clearinghouses for the settlement of trades in securities; and (ii) Distributions consisting of unclaimed principal and interest payments on state and municipal obligations. Additional Excess Receipts come into being in the same manner as Excess Receipts.

6. The Excess Receipts and Additional Excess Receipts (collectively "Funds") claimed herein constitute ununclaimed property which comes into being when Distributions by the entity initially issuing the shares of stock, bonds, debentures and other securities ("Issuer") do not reach the Beneficial Owner. Intermediaries in the chain of distribution, such as banks, brokerage firms and clearinghouses, act on behalf of the Issuer and the Beneficial Owner with respect to Distributions.

7. If the identity of the Beneficial Owner is unknown, Distributions by corporations ("Corporate Issuers") and state and local governmental entities ("Government Issuers") that are unclaimed should be remitted to the state in which the Corporate Issuer is incorporated, or to the state of the Government Issuer, pursuant to each such state's unclaimed property statute. Each State claims such Distributions by Corporate Issuers incorporated within that State and by Government Issuers of that State.

8. Upon information and belief, portions of the Funds presently being remitted to New York are being commingled with the general funds of New York, are being expended by New York for general governmental purposes, and are not being held separate by New York subject to claims by the rightful owners.

PRAYER FOR RELIEF

WHEREFORE, the States pray:

1. That New York be restrained and enjoined from expending any Funds collected but presently unspent, and any Funds it may collect in the future, until such time as this controversy is resolved, and that all such Funds be kept in a segregated account;

2. That judgment be entered declaring that if the Beneficial Owners are unknown, the Funds held by brokerage firms and other intermediaries attributable to Corporate Issuers and Government Issuers are subject only to the claims of the state of incorporation of the Corporate Issuer or the state of the Government Issuer;

3. That New York be directed to pay or deliver to each of the States all Funds it has received and may receive, where the Beneficial Owners of the Funds are unknown, that are attributable to Corporate Issuers incorporated in each such State and to Government Issuers of each such State, which presently are deemed abandoned

pursuant to the applicable dormancy period under each such State's unclaimed property statute;

4. That New York be directed to pay or deliver to each of the States all remaining Funds it has received and may receive, where the Beneficial Owners of the Funds are unknown, that are attributable to Corporate Issuers incorporated in each such State and to Government Issuers of each such State, as such Funds become abandoned pursuant to the applicable dormancy period under each such State's unclaimed property statute; and

5. Such other and further relief as this Court deems just and proper.

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TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	2
ARGUMENT	5
I. The States Satisfy The Requirements For Intervention Set Forth In Fed. R. Civ. P. 24(a)(2), And Are Therefore Entitled To Intervene As A Matter Of Right	5
A. The standards of Rule 24(a)(2) are met	6
B. The States' motion is timely	7
II. Permissive Intervention Pursuant To Fed. R. Civ. P. 24(b)(2) Is Appropriate	8
III. Intervention Is Proper Under The Principles Established By This Court	10
CONCLUSION	10

TABLE OF AUTHORITIES

CASES Page

Consolidated Edison Co. v. Breznay, —— F.2d —— (Temp.Em.Ct.App. No. DC-108 March 14, 1989) 7
NAACP v. New York, 413 U.S. 345 (1973) 7, 8
New York Petroleum Corp. v. Ashland Oil, Inc., 757 F.2d 288 (Temp.Em.Ct.App. 1985) 7
Pennsylvania v. New York, 407 U.S. 206 (1972) ..... *passim*
Texas v. New Jersey, 379 U.S. 674 (1965) ..... *passim*
Texas v. New Jersey, No. 13 Original, Report of Special Master on Application of Florida for Permission to Intervene (May 10, 1963) 8
Western Union Telegraph Company v. Pennsylvania, 368 U.S. 71 (1961) 10

RULES

Fed. R. Civ. P. 24(a)(2) 5, 6
Fed. R. Civ. P. 24(b)(2) 8, 9, 10
U.S. Supreme Court Rule 9.2 5

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On May 31, 1988, this Court granted Plaintiff State of Delaware's ("Delaware") Motion for Leave to File Complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal property held by securities brokerage firms incorporated in Delaware, referred to by Delaware as "Escheatable Property of Unknowns." On December

12, 1988, Thomas Jackson, Esquire, was appointed Special Master. On February 21, 1989, the Court granted the State of Texas' ("Texas") Motion for Leave to File Complaint in Intervention. Texas, like Delaware, raised the issue as to which state is entitled to claim and take possession of "Escheatable Property of Unknowns," which it referred to as "Excess Receipts." The Texas Complaint also made subject to this suit certain additional unclaimed intangible personal property held by clearinghouses for the settlement of trades in securities, and unclaimed principal and interest payments on state and municipal obligations.

Applicants for Intervention, the States of Alabama, Hawaii, Illinois, Indiana, Kansas, Louisiana, Montana, Nevada, Oklahoma, South Dakota, Utah and Washington, and the Commonwealths of Kentucky and Pennsylvania ("States"), seek leave to intervene in order to assert their claim to a portion of the unclaimed property in controversy and certain additional property which comes into being in the same manner.

STATEMENT OF THE CASE

The States' proposed Complaint in Intervention ("Complaint") sets forth the entitlement of the States to certain unclaimed intangible personal property, referred to by the States as "Excess Receipts" and "Additional Excess Receipts" (collectively "Funds"), which comes into being and acquires its character as unclaimed property in the context of securities transactions.

Excess Receipts as defined in the Complaint and motion consist of unclaimed payments of dividends, profits, principal, interest, and securities representing any of the foregoing (collectively "Distributions"), held or formerly held by brokerage firms (regardless of where incorporated). Excess Receipts are Distributions received by these brokerage firms for the benefit of the entities or individuals who possess the economic rights to the secu-

rities, including the entitlement to Distributions ("Beneficial Owners"), but which do not reach the Beneficial Owners. Upon information and belief, Excess Receipts are maintained in a "Suspense Account" until expiration of the applicable dormancy period, after which time they generally are demanded by and are remitted to New York.

Additional Excess Receipts as defined in the Complaint and motion consist of (i) Distributions presently being remitted, or which may be remitted, to New York by nonbrokerage firm intermediaries, such as banks and clearinghouses for the settlement of trades in securities; and (ii) Distributions consisting of unclaimed principal and interest payments on state and municipal obligations. Additional Excess Receipts come into being in the same manner as Excess Receipts.

These definitions of the intangible property which is the subject of this lawsuit are substantively the same as those used by Texas with one exception: they include the same classes of unclaimed property held by non-Delaware brokerage firms and by nonbrokerage firm intermediaries in addition to clearinghouses.

The Funds claimed by the States constitute unclaimed property which comes into being when Distributions by the entity initially issuing the shares of stock, bonds, debentures and other securities ("Issuer") do not reach the Beneficial Owner. Intermediaries in the chain of distribution, such as banks, brokerage firms and clearinghouses, act on behalf of the Issuer and the Beneficial Owner with respect to Distributions.

Delaware, New York and the States assert conflicting claims to the Excess Receipts based on the decisions of this Court in *Texas* v. *New Jersey*, 379 U.S. 674 (1965), and *Pennsylvania* v. *New York*, 407 U.S. 206 (1972). Delaware contends that Excess Receipts held by brokerage firms incorporated in Delaware should be re-

mitted to it as the state of incorporation of the brokerage firms holding such funds, since the identities of the Beneficial Owners of the Excess Receipts are unknown. New York contends that it should receive those Excess Receipts because they are owed to other brokerage firms, and most brokerage firms have New York trading addresses.

Texas contends that it should receive that portion of the unclaimed property in controversy resulting from Distributions by corporate and governmental issuers of that state. As Texas made clear in its intervention papers, Delaware's Complaint did not include significant aspects of the securities distribution system. For example, Delaware did not address entitlement to unclaimed intangible personal property held by intermediaries not incorporated in Delaware, because under Delaware's legal theory, it would have no right to claim and take possession of such intangible personal property. Texas' Complaint properly expanded the action to encompass unclaimed intangible personal property held by clearinghouses. It did not, however, include brokerage firms not incorporated in Delaware or nonbrokerage firm intermediaries other than clearinghouses.

The States make the same claim as Texas, adding thereto certain additional property. The States' Complaint encompasses all intermediaries, wherever incorporated, because an intermediary's state of incorporation is merely incidental to the factual and legal analysis required to decide the issues underlying this lawsuit. New York's wrongful takings have not been limited to Delaware brokerage firms and clearinghouses. The entire securities distribution system must be examined for the proper resolution of the issues presently before the Court, and for this analysis it matters not whether a brokerage firm or intermediary is incorporated in Delaware or in another state. Moreover, it would be inefficient to leave "loose ends," such as non-Delaware brokerage firms and nonbrokerage firm intermediaries other than clearinghouses,

which otherwise would have to be addressed in a separate lawsuit.

The States assert their claims pursuant to their respective unclaimed property statutes, which provide, *inter alia*, for the custodial taking of unclaimed intangible personal property when the identity of the owner of the property is unknown to the holder but Distributions were made by corporations incorporated in one of the States, by one of the States, or by local governmental entities of one of the States, and no claim by the owner of said property has been asserted within the applicable dormancy period. The States' respective unclaimed property statutes provide that after the expiration of the applicable dormancy period, the property is presumed abandoned and shall be remitted to the State. A copy of the relevant portions of each of the States' unclaimed property statutes is set forth in the Appendix hereto.

Application of the rule of law set forth in *Texas* v. *New Jersey* and *Pennsylvania* v. *New York* requires that judgment be entered for the States. No new rule of law need be established to achieve that result.

ARGUMENT

I. The States Satisfy The Requirements For Intervention Set Forth In Fed. R. Civ. P. 24(a)(2), And Are Therefore Entitled To Intervene As A Matter Of Right

Rule 9.2 of the Supreme Court directs that the Federal Rules of Civil Procedure, "where their application is appropriate, may be taken as a guide to procedure in original actions." Fed. R. Civ. P. 24(a)(2), which is the appropriate guide for determining the propriety of intervention by a nonparty in an original jurisdiction action, provides that any person who timely applies shall be permitted to intervene in an action:

> [W]hen the applicant claims an interest relating to the property or transaction which is the subject of

the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

A. *The standards of Rule 24(a)(2) are met*

The States claim a portion of the specific unclaimed property, *i.e.*, the Funds, which constitutes the subject matter of this action. The total amount of the Funds presently claimed by the States, while presently unknown, is substantial and sufficient to establish the entitlement of the States to intervene as a matter of right.

This Court has previously allowed states to intervene in original jurisdiction unclaimed property suits when the intervenor states were claiming an interest in the property that was the subject of the controversy. *See, e.g., Texas* v. *New Jersey, supra,* and *Pennsylvania* v. *New York, supra.* The State of Florida was permitted to intervene in *Texas* v. *New Jersey,* based upon its claim that it had the right to escheat or take possession of a portion of the property involved in that case, just as Texas has been allowed to intervene in this lawsuit. As to intervention, the position of the States here is indistinguishable from that of Florida and Texas.

The right of the States to claim and take possession of the Funds will be conclusively determined by the Court's decision in this proceeding. If the contention of either Delaware or New York is sustained, the States will be precluded from claiming and taking possession of the Funds.

The States' interests are not adequately represented by the original parties because Delaware, New York and the States each assert conflicting claims to the Funds. The States' interests are not adequately represented by Texas because Texas has not put in issue all the intangible personal property sought by the States. Texas, moreover,

cannot be expected to identify, advocate and protect the rights of the States for several reasons: (1) Texas has no incentive to identify the property held by New York which properly belongs to the States. (2) Each State's claims are based on its own unclaimed property statute, which Texas cannot be expected to master so as to adequately represent the interests of the States. (3) Although Texas and the States dispute the right of Delaware and New York to the Funds, Texas and the States may assert conflicting claims thereto as the record becomes fully developed.

The States should not be required to depend upon another state to protect their interests. This is especially so in a situation such as this where the States would have no recourse if that state failed adequately to do so. "When a party decides to forego taking action in a lawsuit in the expectation that another party will protect its interests, it does so at its peril." *Consolidated Edison Co.* v. *Breznay*, No. DC-108, slip op. at 15 (Temp. Em. Ct. App. March 14, 1989) (quoting *New York Petroleum Corp.* v. *Ashland Oil, Inc.*, 757 F.2d 288, 292 (Temp. Em. Ct. App. 1985)).

Clearly, the interests of the States are not and cannot be adequately represented by the existing parties. Under these circumstances, the States have satisfied the standards for intervention as a matter of right.

B. *The States' motion is timely*

The States' Motion for Leave to File Complaint in Intervention is timely. "Timeliness is to be determined from all the circumstances." *NAACP* v. *New York*, 413 U.S. 345, 366 (1973). The point to which the suit has progressed is a factor for the Court to consider, although other factors may be considered as well. *Id.* at 365-66.

This Court has allowed States to intervene in original jurisdiction unclaimed property cases after the Answer

to the initial Complaint was filed. *See, e.g., Texas* v. *New Jersey, supra,* and *Pennsylvania* v. *New York, supra.* For example, in *Texas* v. *New Jersey,* the State of Florida was permitted to intervene more than six months after the State of New Jersey filed its Answer. *See Texas* v. *New Jersey,* No. 13 Original, Report of Special Master on Application of Florida for Permission to Intervene at 5 (May 10, 1963). Although intervention was denied in *NAACP, supra,* a decision on summary judgment was imminent.

Unlike *NAACP,* the instant case has barely commenced; indeed, it has not progressed beyond the initial pleadings stage. Texas was permitted to intervene on February 21, 1989. The Answer to Texas' Complaint has not been filed. The Master has not yet scheduled the first status conference. Although significant factual development may be required, only one set of interrogatories has been served; and the only substantive activity in the suit since Texas' Motion for Leave to File Complaint in Intervention was granted has been the filing of responses to that one set of interrogatories. Thus, intervention by the States will neither prejudice any of the parties, nor interrupt or delay the litigation. The States' Motion for Leave to File Complaint in Intervention, accordingly, is timely.

II. Permissive Intervention Pursuant To Fed. R. Civ. P. 24(b)(2) Is Appropriate

Alternatively, the States urge the Court to exercise its discretion to allow permissive intervention in favor of the States pursuant to Rule 24(b)(2). The considerations which support intervention as a matter of right also justify permissive intervention by the States.

Rule 24(b) reads in pertinent part as follows:

> Upon timely application anyone may be permitted to intervene in an action: * * * (2) when an applicant's claim or defense and the main action have a question of law or fact in common. * * * In exer-

> cising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The States' claims involve questions of law and fact common to those present in the litigation. The principal authorities relied upon by the States, Texas, Delaware and New York in support of their claims are identical. The Court must analyze the whole securities distribution system in order to apply the rule of *Texas* v. *New Jersey*, *supra*, and *Pennsylvania* v. *New York*, *supra*.

If the States are not permitted to intervene and assert their claims, the likelihood is great that development and analysis of the facts and the law will be incomplete. The States' intervention in this action will aid in the resolution of the factual issues and the application of the law to the facts. Moreover, once the record in the case is fully developed, application of the controlling precedents may result in divergent interests, beyond those that presently exist, between Delaware, New York, Texas and the States. Consequently, the States urge the Court not to deny these issues the benefit of the advocacy of all parties with a direct interest in and claim to the property.

The States' intervention will also avoid a multiplicity of lawsuits by obviating the need for the States to file separate actions against New York. Thus, intervention by the States will expedite the ultimate resolution of the entire controversy, and will promote judicial economy and efficiency.

Pursuant to Rule 24(b)(2), the Court may exercise its discretion and allow permissive intervention if an applicant's claim involves issues of fact or law common to those already present in the litigation and intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties. As previously stated,

this litigation is at an early stage. The States respectfully submit that the criteria set forth in Rule 24(b)(2) have been satisfied, and that they should be allowed to intervene.

III. Intervention Is Proper Under The Principles Established By This Court

In *Western Union Telegraph Company* v. *Pennsylvania*, 368 U.S. 71, 79 (1961), this Court recognized the difficulties inherent in resolving controversies between different states over their respective rights to claim and take possession of unclaimed intangible personal property, and concluded that this Court is the appropriate forum in which "all the States that want to do so can present their claims for consideration and final, authoritative determination." *See also Pennsylvania* v. *New York*, *supra* (Arizona, California, Connecticut and Indiana permitted to intervene); *Texas* v. *New Jersey*, *supra* (Florida permitted to intervene).

The States seek the opportunity to present their claims to this Court. This Court has allowed Texas to intervene in this action, and for purposes of this motion the States stand in the same position as did Texas prior to the granting of its motion. Therefore, intervention in this suit by the States not only is appropriate, but is necessary for the equitable resolution of this controversy.

CONCLUSION

For the reasons stated, the Motion of the States of Alabama, Hawaii, Illinois, Indiana, Kansas, Louisiana, Montana, Nevada, Oklahoma, South Dakota, Utah and Washington, and the Commonwealths of Kentucky and Pennsylvania for Leave to File Complaint in Intervention should be granted.

Respectfully submitted,

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